

1 AN ACT relating to crimes and punishments.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 500.080 is amended to read as follows:

4 As used in the Kentucky Penal Code, unless the context otherwise requires:

- 5 (1) "Actor" means any natural person and, where relevant, a corporation or an
6 unincorporated association;
- 7 (2) "Crime" means a misdemeanor or a felony;
- 8 (3) "Dangerous instrument" means any instrument, including parts of the human body
9 when a serious physical injury is a direct result of the use of that part of the human
10 body, article, or substance which, under the circumstances in which it is used,
11 attempted to be used, or threatened to be used, is readily capable of causing death or
12 serious physical injury;
- 13 (4) "Deadly weapon" means any of the following:
- 14 (a) A weapon of mass destruction;
- 15 (b) Any weapon from which a shot, readily capable of producing death or other
16 serious physical injury, may be discharged;
- 17 (c) Any knife other than an ordinary pocket knife or hunting knife;
- 18 (d) Billy, nightstick, or club;
- 19 (e) Blackjack or slapjack;
- 20 (f) Nunchaku karate sticks;
- 21 (g) Shuriken or death star; or
- 22 (h) Artificial knuckles made from metal, plastic, or other similar hard material;
- 23 (5) "Felony" means an offense, **other than a gross misdemeanor**, for which a sentence
24 to a term of imprisonment of at least one (1) year in the custody of the Department
25 of Corrections may be imposed;
- 26 (6) "Government" means the United States, any state, county, municipality, or other
27 political unit, or any department, agency, or subdivision of any of the foregoing, or

- 1 any corporation or other association carrying out the functions of government;
- 2 (7) "He" means any natural person and, where relevant, a corporation or an
3 unincorporated association;
- 4 (8) "Law" includes statutes, ordinances, and properly adopted regulatory provisions.
5 Unless the context otherwise clearly requires, "law" also includes the common law;
- 6 (9) "Minor" means any person who has not reached the age of majority as defined in
7 KRS 2.015;
- 8 (10) "Misdemeanor" means an offense, other than a traffic infraction, for which a
9 sentence to a term of imprisonment of not more than twenty-four (24)~~twelve (12)~~
10 months can be imposed;
- 11 (11) "Offense" means conduct for which a sentence to a term of imprisonment or to a
12 fine is provided by any law of this state or by any law, local law, or ordinance of a
13 political subdivision of this state or by any law, order, rule, or regulation of any
14 governmental instrumentality authorized by law to adopt the same;
- 15 (12) "Person" means a human being, and where appropriate, a public or private
16 corporation, an unincorporated association, a partnership, a government, or a
17 governmental authority;
- 18 (13) "Physical injury" means substantial physical pain or any impairment of physical
19 condition;
- 20 (14) "Possession" means to have actual physical possession or otherwise to exercise
21 actual dominion or control over a tangible object;
- 22 (15) "Serious physical injury" means physical injury which creates a substantial risk of
23 death, or which causes serious and prolonged disfigurement, prolonged impairment
24 of health, or prolonged loss or impairment of the function of any bodily organ;
- 25 (16) "Unlawful" means contrary to law or, where the context so requires, not permitted
26 by law. It does not mean wrongful or immoral;
- 27 (17) "Violation" means an offense, other than a traffic infraction, for which a sentence to

1 a fine only can be imposed; and

2 (18) "Weapon of mass destruction" means:

3 (a) Any destructive device as defined in KRS 237.030, but not fireworks as
4 defined in KRS 227.700;

5 (b) Any weapon that is designed or intended to cause death or serious physical
6 injury through the release, dissemination, or impact of toxic or poisonous
7 chemicals or their precursors;

8 (c) Any weapon involving a disease organism; or

9 (d) Any weapon that is designed to release radiation or radioactivity at a level
10 dangerous to human life.

11 ➔Section 2. KRS 530.050 is amended to read as follows:

12 (1) A person is guilty of nonsupport:

13 (a) When he or she persistently fails to provide support which he or she can
14 reasonably provide and which he or she knows he or she has a duty to provide
15 to a minor or to a child adjudged mentally disabled, indigent spouse or
16 indigent parent; or

17 (b) Upon a finding that a defendant obligor, subject to court order to pay any
18 amount for the support of a minor child, is delinquent in meeting the full
19 obligation established by such order and has been so delinquent for a period of
20 at least two (2) months duration.

21 (2) A person is guilty of flagrant nonsupport when he or she persistently fails to
22 provide support which he or she can reasonably provide and which he or she knows
23 he or she has a duty to provide by virtue of a court or administrative order to a
24 minor or to a child adjudged mentally disabled, indigent spouse or indigent parent
25 and the failure results in:

26 (a) An arrearage of not less than one thousand dollars (\$1,000); or

27 (b) Six (6) consecutive months without payment of support; or

1 (c) The dependent having been placed in destitute circumstances. For the
2 purposes of this paragraph, it shall be prima facie evidence that a dependent
3 has been placed in destitute circumstances if the dependent is a recipient of
4 public assistance as defined in KRS 205.010.

5 (3) A person has a duty to provide support for an indigent spouse, a minor child or
6 children, or a child or children adjudged mentally disabled and, for purposes of this
7 section, is presumed to know of that duty.

8 (4) Any person who is eighteen (18) years of age or over, residing in this state and
9 having in this state a parent who is destitute of means of subsistence and unable
10 because of old age, infirmity, or illness to support himself or herself, has a duty to
11 provide support for such parent and, for purposes of this section, is presumed to
12 know of that duty.

13 (5) Nonsupport is a Class A misdemeanor. For a second offense, the person shall
14 receive a minimum sentence of seven (7) days in jail. For a third or any subsequent
15 offense, the person shall receive a minimum sentence of thirty (30) days in jail.

16 (6) Flagrant nonsupport is a **gross misdemeanor, unless the arrearage is five thousand**
17 **dollars (\$5,000) or more, in which case it is a** Class D felony.

18 ➔Section 3. KRS 532.020 is amended to read as follows:

19 (1) Any offense defined outside this code for which a law outside this code provides a
20 sentence to a term of imprisonment in the state for:

21 (a) At least one (1) but not more than five (5) years shall be deemed a Class D
22 felony;

23 (b) At least five (5) but not more than ten (10) years shall be deemed a Class C
24 felony;

25 (c) At least ten (10) but not more than twenty (20) years shall be deemed a Class
26 B felony;

27 (d) For at least twenty (20) but not more than fifty (50) years or for life shall be

1 deemed a Class A felony.

2 (2) *Any offense defined outside this code for which a law outside this code provides a*
3 *sentence to a term of imprisonment in the state with a maximum which falls*
4 *between twelve (12) and twenty-four (24) months shall be deemed a gross*
5 *misdemeanor.*

6 (3) Any offense defined outside this code for which a law outside this code provides a
7 sentence to a definite term of imprisonment with a maximum which falls between
8 ninety (90) days and twelve (12) months shall be deemed a Class A misdemeanor.

9 ~~(4)~~(3) Any offense defined outside this code for which a law outside this code
10 provides a sentence to a definite term of imprisonment with a maximum of less than
11 ninety (90) days shall be deemed a Class B misdemeanor.

12 ~~(5)~~(4) Any offense defined outside this code for which a law outside this code
13 provides a sentence to a fine only or to any other punishment, whether in
14 combination with a fine or not, other than death or imprisonment shall be deemed a
15 violation.

16 ➔Section 4. KRS 532.040 is amended to read as follows:

17 (1) *Except as provided in subsection (2) of this section,* when a person is convicted of
18 an offense, other than a capital offense or having been designated a violent offender
19 as defined in KRS 439.3401, the court, where authorized by KRS Chapter 533 and
20 where not prohibited by other provisions of applicable law, may sentence such
21 person to a period of probation or to a period of conditional discharge as provided
22 in that chapter. A sentence to probation or conditional discharge shall be deemed a
23 tentative one to the extent that it may be altered or revoked in accordance with KRS
24 Chapter 533, but for purposes of appeal shall be deemed to be a final judgment of
25 conviction. In any case where the court imposes a sentence of probation or
26 conditional discharge, it may also impose a fine as authorized by KRS Chapter 534.

27 (2) *Unless a defendant is ineligible for probation under another provision of law, a*

sentence of imprisonment for a gross misdemeanor shall be probated on such reasonable terms as the court deems necessary to address the risks and needs of the defendant.

➔Section 5. KRS 532.070 is amended to read as follows:

(1) When a sentence of imprisonment for a felony is fixed by a jury pursuant to KRS 532.060 and the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that the maximum term fixed by the jury is unduly harsh, the court may modify that sentence and fix a maximum term within the limits provided in KRS 532.060 for the offense for which the defendant presently stands convicted.

(2) When a sentence of imprisonment is fixed by a jury for a Class D felony~~is fixed by a jury~~ pursuant to KRS 532.060 or for a gross misdemeanor pursuant to Section 6 of this Act, and the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose such a sentence, the court may sentence the defendant to a definite term of imprisonment in a county or a regional correctional institution for a term of one (1) year or less.

➔Section 6. KRS 532.090 is amended to read as follows:

(1) A sentence of imprisonment for a Class A or Class B misdemeanor shall be a definite term and shall be fixed within the following maximum limitations:

(a)~~(1)~~ For a Class A misdemeanor, the term shall not exceed twelve (12) months; and

(b)~~(2)~~ For a Class B misdemeanor, the term shall not exceed ninety (90) days.

(2) A sentence of imprisonment for a gross misdemeanor shall be an indeterminate sentence, the maximum of which shall be not more than twenty-four (24) months,

1 *subject to modification by the trial judge pursuant to Section 5 of this Act.*

2 ➔Section 7. KRS 532.100 is amended to read as follows:

- 3 (1) When an indeterminate term of imprisonment is imposed, the court shall commit
4 the defendant to the custody of the Department of Corrections for the term of his *or*
5 *her* sentence and until released in accordance with the law.
- 6 (2) When a definite term of imprisonment is imposed, the court shall commit the
7 defendant to the county or city correctional institution or to a regional correctional
8 institution for the term of his *or her* sentence and until released in accordance with
9 the law.
- 10 (3) When a sentence of death is imposed, the court shall commit the defendant to the
11 custody of the Department of Corrections with directions that the sentence be
12 carried out according to law.
- 13 (4) (a) The provisions of KRS 500.080(5) notwithstanding, if a *gross misdemeanor*
14 *or* Class D felon is sentenced to an indeterminate term of imprisonment of
15 five (5) years or less, he *or she* shall serve that term in a county jail in a
16 county in which the fiscal court has agreed to house state prisoners; except
17 that, when an indeterminate sentence of two (2) years or more is imposed on a
18 Class D felon convicted of a sexual offense enumerated in KRS 197.410(1),
19 or a crime under KRS 17.510(11) or (12), the sentence shall be served in a
20 state institution. Counties choosing not to comply with the provisions of this
21 paragraph shall be granted a waiver by the commissioner of the Department of
22 Corrections.
- 23 (b) The provisions of KRS 500.080(5) notwithstanding, a *gross misdemeanor or*
24 Class D felon who received a sentence of more than five (5) years for
25 nonviolent, nonsexual offenses, but who currently has less than five (5) years
26 remaining to be served, may serve the remainder of his or her term in a county
27 jail in a county in which the fiscal court has agreed to house state prisoners.

- 1 (c) 1. The provisions of KRS 500.080(5) notwithstanding, and except as
2 provided in subparagraph 2. of this paragraph, a **gross misdemeanor or**
3 Class C or D felon with a sentence of more than five (5) years who is
4 classified by the Department of Corrections as community custody shall
5 serve that term in a county jail in a county in which the fiscal court has
6 agreed to house state prisoners if:
- 7 a. Beds are available in the county jail;
8 b. State facilities are at capacity; and
9 c. Halfway house beds are being utilized at the contract level as of
10 July 15, 2000.
- 11 2. When an indeterminate sentence of two (2) years or more is imposed on
12 a felon convicted of a sex crime, as defined in KRS 17.500, or any
13 similar offense in another jurisdiction, the sentence shall be served in a
14 state institution.
- 15 3. Counties choosing not to comply with the provisions of this paragraph
16 shall be granted a waiver by the commissioner of the Department of
17 Corrections.
- 18 (d) Any jail that houses state inmates under this subsection shall offer programs
19 as recommended by the Jail Standards Commission. The Department of
20 Corrections shall adopt the recommendations of the Jail Standards
21 Commission and promulgate administrative regulations establishing required
22 programs for a jail that houses state inmates under this subsection.
- 23 (5) The jailer of a county in which a **gross misdemeanor,** Class D felon, or a Class C
24 felon is incarcerated may request the commissioner of the Department of
25 Corrections to incarcerate the felon in a state corrections institution if the jailer has
26 reasons to believe that the felon is an escape risk, a danger to himself, **herself,** or
27 other inmates, an extreme security risk, or needs protective custody beyond that

1 which can be provided in a county jail. The commissioner of the Department of
2 Corrections shall evaluate the request and transfer the inmate if he or she deems it
3 necessary. If the commissioner refuses to accept the felon inmate, and the Circuit
4 Judge of the county that has jurisdiction of the offense charged is of the opinion that
5 the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent
6 of the Governor, may order the felon transferred to the custody of the Department of
7 Corrections.

8 (6) Gross misdemeanants, Class D felons, and Class C felons serving their time in a
9 local jail shall be considered state prisoners, and the Department of Corrections
10 shall pay the jail in which the prisoner is incarcerated a per diem amount
11 determined according to KRS 431.215(2). For other state prisoners and parole
12 violator prisoners, the per diem payments shall also begin on the date prescribed in
13 KRS 431.215(2).

14 (7) State prisoners, excluding gross misdemeanants and the Class D felons and Class
15 C felons qualifying to serve time in county jails, shall be transferred to the state
16 institution within forty-five (45) days of final sentencing.

17 ➔Section 8. KRS 532.110 is amended to read as follows:

18 (1) When multiple sentences of imprisonment are imposed on a defendant for more
19 than one (1) crime, including a crime for which a previous sentence of probation or
20 conditional discharge has been revoked, the multiple sentences shall run
21 concurrently or consecutively as the court shall determine at the time of sentence,
22 except that:

23 (a) A definite and an indeterminate term shall run concurrently and both
24 sentences shall be satisfied by service of the indeterminate term;

25 (b) The aggregate of consecutive definite terms shall not exceed in maximum
26 length the longest extended term which would be authorized for the highest
27 class of crime for which any of the sentences is imposed~~[one (1) year]~~;

1 (c) The aggregate of consecutive indeterminate terms shall not exceed in
2 maximum length the longest extended term which would be authorized by
3 KRS 532.080 for the highest class of crime for which any of the sentences is
4 imposed. In no event shall the aggregate of consecutive indeterminate terms
5 exceed seventy (70) years; and

6 (d) The sentences of a defendant convicted of two (2) or more felony sex crimes,
7 as defined in KRS 17.500, involving two (2) or more victims shall run
8 consecutively.

9 (2) If the court does not specify the manner in which a sentence imposed by it is to run,
10 the sentence shall run concurrently with any other sentence which the defendant
11 must serve unless the sentence is required by subsection (3) of this section or KRS
12 533.060 to run consecutively.

13 (3) Notwithstanding any provision in this section to the contrary, if a person is
14 convicted of an offense that is committed while he or she is imprisoned in a penal
15 or reformatory institution, during an escape from imprisonment, or while he or she
16 awaits imprisonment, the sentence imposed for that offense may be added to the
17 portion of the term which remained unserved at the time of the commission of the
18 offense. The sentence imposed upon any person convicted of an escape or attempted
19 escape offense shall run consecutively with any other sentence which the defendant
20 must serve.

21 (4) Notwithstanding any provision in this chapter to the contrary, if a person is
22 convicted of an offense that is committed while he or she is imprisoned in a penal
23 or reformatory institution, the sentence imposed for that offense may, upon order of
24 the trial court, be served in that institution. The person may be transferred to another
25 institution pursuant to administrative regulations of the Department of Corrections.

26 ➔Section 9. KRS 532.260 is amended to read as follows:

27 (1) Any Class C or Class D felon or gross misdemeanor who is serving a sentence in

1 a state-operated prison, contract facility, or county jail shall, at the discretion of the
2 commissioner, be eligible to serve the remainder of his or her sentence outside the
3 walls of the detention facility under terms of home incarceration or conditional
4 release to an appropriate housing alternative specified by KRS 532.262 using an
5 approved monitoring device as defined in KRS 532.200, if the felon:

6 (a) 1. Has not been convicted of, pled guilty to, or entered an Alford plea to a
7 violent felony as defined by the Department of Corrections classification
8 system; or

9 2. Has not been convicted of, pled guilty to, or entered an Alford plea to a
10 sex crime as defined in KRS 17.500;

11 (b) Has nine (9) months or less to serve on his or her sentence;

12 (c) Has voluntarily participated in a discharge planning process with the
13 department to address his or her:

14 1. Education;

15 2. Employment, technical, and vocational skills;

16 3. Housing, medical, and mental health needs; and

17 4. Criminal risk factors; and

18 (d) Has needs that may be adequately met in the community where he or she will
19 reside upon release.

20 (2) A person who is placed under terms of home incarceration pursuant to subsection
21 (1) of this section shall remain in the custody of the Department of Corrections. Any
22 unauthorized departure from the terms of home incarceration may be prosecuted as
23 an escape pursuant to KRS Chapter 520 and shall result in the person being returned
24 to prison.

25 (3) The Department of Corrections shall promulgate administrative regulations to
26 implement the provisions of this section.

27 ➔Section 10. KRS 533.010 is amended to read as follows:

- 1 (1) Any person who has been convicted of a crime and who has not been sentenced to
2 death may be sentenced to probation, probation with an alternative sentencing plan,
3 or conditional discharge as provided in this chapter.
- 4 (2) Before imposition of a sentence of imprisonment, the court shall consider probation,
5 probation with an alternative sentencing plan, or conditional discharge. Unless the
6 defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits
7 probation, shock probation, or conditional discharge, after due consideration of the
8 defendant's risk and needs assessment, nature and circumstances of the crime, and
9 the history, character, and condition of the defendant, probation or conditional
10 discharge shall be granted, unless the court is of the opinion that imprisonment is
11 necessary for protection of the public because:
- 12 (a) There is substantial risk that during a period of probation or conditional
13 discharge the defendant will commit another crime;
- 14 (b) The defendant is in need of correctional treatment that can be provided most
15 effectively by his commitment to a correctional institution; or
- 16 (c) A disposition under this chapter will unduly depreciate the seriousness of the
17 defendant's crime.
- 18 (3) In the event the court determines that probation is not appropriate after due
19 consideration of the defendant's risk and needs assessment, nature and
20 circumstances of the crime, and the history, character, and condition of the
21 defendant, probation with an alternative sentencing plan shall be granted unless the
22 court is of the opinion that imprisonment is necessary for the protection of the
23 public because:
- 24 (a) There is a likelihood that during a period of probation with an alternative
25 sentencing plan or conditional discharge the defendant will commit a Class D
26 or Class C felony or a substantial risk that the defendant will commit a Class
27 B or Class A felony;

- 1 (b) The defendant is in need of correctional treatment that can be provided most
2 effectively by commitment to a correctional institution; or
- 3 (c) A disposition under this chapter will unduly depreciate the seriousness of the
4 defendant's crime.
- 5 (4) The court shall not determine that there is a likelihood that the defendant will
6 commit a Class C or Class D felony based upon the defendant's risk and needs
7 assessment and the fact that:
- 8 (a) The defendant has never been convicted of, pled guilty to, or entered an
9 Alford plea to a felony offense;
- 10 (b) If convicted of, having pled guilty to, or entered an Alford plea to a felony
11 offense, the defendant successfully completed probation more than ten (10)
12 years immediately prior to the date of the commission of the felony for which
13 the defendant is now being sentenced and has had no intervening convictions,
14 pleas of guilty, or Alford pleas to any criminal offense during that period; or
- 15 (c) The defendant has been released from incarceration for the commission of a
16 felony offense more than ten (10) years immediately prior to the date of the
17 commission of the felony for which the defendant is now being sentenced and
18 has had no intervening convictions, pleas of guilty, or Alford pleas to any
19 criminal offense during that period.
- 20 (5) In making a determination under subsection (4) of this section, the court may
21 determine that the greater weight of the evidence indicates that there is a likelihood
22 that the defendant will commit a Class C or Class D felony.
- 23 (6) Upon initial sentencing of a defendant or upon modification or revocation of
24 probation, when the court deems it in the best interest of the public and the
25 defendant, the court may order probation with the defendant to serve one (1) of the
26 following alternative sentences:
- 27 (a) To a halfway house for no more than twelve (12) months;

- 1 (b) To home incarceration with or without work release for no more than twelve
2 (12) months;
- 3 (c) To jail for a period not to exceed twelve (12) months with or without work
4 release, community service and other programs as required by the court;
- 5 (d) To a residential treatment program for the abuse of alcohol or controlled
6 substances; or
- 7 (e) To any other specified counseling program, rehabilitation or treatment
8 program, or facility.
- 9 (7) If during the term of the alternative sentence the defendant fails to adhere to and
10 complete the conditions of the alternative sentence, the court may modify the terms
11 of the alternative sentence or may modify or revoke probation and alternative
12 sentence and commit the defendant to an institution.
- 13 (8) In addition to those conditions that the court may impose, the conditions of
14 alternative sentence shall include the following and, if the court determines that the
15 defendant cannot comply with them, then they shall not be made available:
- 16 (a) A defendant sentenced to a halfway house shall:
- 17 1. Be working or pursuing his or her education or be enrolled in a full-time
18 treatment program;
- 19 2. Pay restitution during the term of probation; and
- 20 3. Have no contact with the victim of the defendant's crime;
- 21 (b) A defendant sentenced to home incarceration shall:
- 22 1. Be employed by another person or self-employed at the time of
23 sentencing to home incarceration and continue the employment
24 throughout the period of home incarceration, unless the court determines
25 that there is a compelling reason to allow home incarceration while the
26 defendant is unemployed;
- 27 2. Pay restitution during the term of home incarceration;

- 1 3. Enter a treatment program, if appropriate;
- 2 4. Pay all or some portion of the cost of home incarceration as determined
- 3 by the court;
- 4 5. Comply with other conditions as specified; and
- 5 6. Have no contact with the victim of the defendant's crime;
- 6 (c) A defendant sentenced to jail with community service shall:
- 7 1. Pay restitution during all or some part of the defendant's term of
- 8 probation; and
- 9 2. Have no contact with the victim of the defendant's crime; or
- 10 (d) A defendant sentenced to a residential treatment program for drug and alcohol
- 11 abuse shall:
- 12 1. Undergo mandatory drug screening during term of probation;
- 13 2. Be subject to active, supervised probation for a term of five (5) years;
- 14 3. Undergo aftercare as required by the treatment program;
- 15 4. Pay restitution during the term of probation; and
- 16 5. Have no contact with the victim of the defendant's crime.
- 17 (9) When the court deems it in the best interest of the defendant and the public, the
- 18 court may order the person to work at community service related projects under the
- 19 terms and conditions specified in KRS 533.070. Work at community service related
- 20 projects shall be considered as a form of conditional discharge.
- 21 (10) Probation with alternative sentence shall not be available as set out in KRS 532.045
- 22 and 533.060, except as provided in KRS 533.030(6).
- 23 (11) The court may utilize a community corrections program authorized or funded under
- 24 KRS Chapter 196 to provide services to any person released under this section.
- 25 (12) When the court deems it in the best interest of the defendant and the public, the
- 26 court may order the defendant to placement for probation monitoring by a private
- 27 agency. The private agency shall report to the court on the defendant's compliance

1 with his or her terms of probation or conditional discharge. The defendant shall be
2 responsible for any reasonable charges which the private agency charges.

3 (13) The jailer in each county incarcerating **gross misdemeanants or** Class C or D felons
4 may deny work release privileges to any defendant for violating standards of
5 discipline or other jail regulations. The jailer shall report the action taken and the
6 details of the violation on which the action was based to the court of jurisdiction
7 within five (5) days of the violation.

8 (14) The Department of Corrections shall, by administrative regulation, develop written
9 criteria for work release privileges granted under this section.

10 (15) Reimbursement of incarceration costs shall be paid directly to the jailer in the
11 amount specified by written order of the court. Incarceration costs owed to the
12 Department of Corrections shall be paid through the circuit clerk.

13 (16) The court shall enter into the record written findings of fact and conclusions of law
14 when considering implementation of any sentence under this section.

15 ➔Section 11. KRS 533.251 is amended to read as follows:

16 (1) Every pretrial diversion program shall set as a condition precedent for entry into the
17 program that any defendant charged with a Class D felony offense under KRS
18 Chapter 218A and any defendant charged with a **gross misdemeanor or** Class D
19 felony offense whose criminal, medical, or mental health record indicates a present
20 need for or benefit from substance abuse treatment participate in and demonstrate
21 suitable compliance with the terms of a secular or faith-based substance abuse
22 treatment or recovery program if space is available in a treatment or recovery
23 program suitable for that defendant. The substance abuse treatment or recovery
24 program shall be appropriate to the defendant's needs, and may include commitment
25 to an intensive outpatient program, a residential substance abuse treatment or
26 recovery facility, or the intensive secured drug abuse treatment program developed
27 under KRS 196.285. Consideration may be given, in whole or in part, to a

1 defendant's participation in drug monitoring or a substance abuse treatment or
2 recovery plan ordered under KRS 431.518 as evidence of suitable compliance under
3 this section.

4 (2) The court may waive compliance with subsection (1) of this section if the defendant
5 can show that exigent circumstances exist sufficient to justify diversion program
6 participation without a prior demonstration of treatment compliance.

7 (3) The court may continue in effect any nonfinancial conditions of pretrial release
8 imposed under KRS 431.520 or 431.525 and may hold the case in abeyance during
9 the period of time the defendant is attempting treatment or recovery prior to
10 diversion under subsection (1) of this section.

11 (4) The court may allow a person charged with a Class C felony to participate in a
12 secular or faith-based substance abuse treatment or recovery program under
13 subsection (1) of this section or obtain a waiver under subsection (2) of this section.
14 If the person is successful in the program or is waived, the person shall be eligible
15 for entry into the pretrial diversion program under the same terms, conditions, and
16 limitations as a Class D felon.

17 ➔Section 12. KRS 431.410 is amended to read as follows:

18 The issuance of a summons rather than an arrest warrant shall be mandatory for all
19 offenses, except for violations of KRS 189.290, 189.393, 189.520, 189.580, 511.080 or
20 525.070, which are deemed violations as defined in KRS 532.020~~(5)~~~~(4)~~ and traffic
21 infractions for which a fine only can be imposed unless the judicial officer finds that:

22 (1) The defendant previously has failed to respond to a citation or summons for an
23 offense; or

24 (2) He has no ties to the community and there is a substantial likelihood that he will
25 refuse to respond to a summons; or

26 (3) The whereabouts of the defendant are unknown and the issuance of an arrest
27 warrant is necessary in order to subject him to the jurisdiction of the court; or

- 1 (4) Where arrest is necessary to prevent imminent bodily harm to the accused or to
2 another; or
- 3 (5) For any other good and compelling reason as determined by the judicial officer.
- 4 ➔Section 13. KRS 439.177 is amended to read as follows:
- 5 (1) Any misdemeanor, *other than a gross misdemeanor*, may petition the sentencing
6 court for parole privileges.
- 7 (2) The sentencing judge shall study the record of all persons petitioning for parole and,
8 in his discretion, may:
- 9 (a) Cause additional background or character information to be collected or
10 reduced to writing by the Department of Corrections;
- 11 (b) Conduct hearings on the desirability of granting parole;
- 12 (c) Impose on the parolee the conditions he sees fit;
- 13 (d) Order the granting of parole;
- 14 (e) Issue warrants for persons when there is reason to believe they have violated
15 the conditions of their parole and conduct hearings on such matters;
- 16 (f) Determine the period of supervision for parolees, which period may be subject
17 to extension or reduction;
- 18 (g) Grant final discharge to parolees.
- 19 (3) The sentencing judge shall keep a record of his acts, and shall notify the appropriate
20 jail official of his decision relating to the persons who are or have been confined
21 therein.
- 22 (4) When an order for parole is issued, it shall recite the conditions thereof, and such
23 orders shall be transmitted to the Department of Corrections.
- 24 (5) The period of time spent on parole shall not count as a part of the prisoner's
25 maximum sentence except in determining the parolee's eligibility for a final
26 discharge from parole as set out in subsection (7).
- 27 (6) Paroled prisoners shall be under the supervision of the department and subject to its

1 decision for the duration of parole. Supervision of the parolee by the Department of
2 Corrections shall cease at the time of recommitment of the prisoner to the jail as a
3 parole violator, or at the time a final discharge from parole is granted by the
4 sentencing judge.

5 (7) When any paroled prisoner has performed the obligations of his parole during his
6 period of active parole supervision, the sentencing judge may, at the termination of
7 a period to be determined by the sentencing judge, issue a final discharge from
8 parole to the prisoner. Unless ordered earlier by the sentencing judge, a final
9 discharge shall be issued when the prisoner has been out of jail on parole a
10 sufficient period of time to have been eligible for discharge from jail by maximum
11 expiration of sentence had he not been paroled, if before this date he had not
12 absconded from parole supervision or that a warrant for parole violation had not
13 been issued.

14 (8) The prisoner convicted of a misdemeanor and released on parole under the
15 provisions of this statute shall be subject to all reasonable Department of
16 Corrections regulations.

17 ➔Section 14. KRS 439.340 is amended to read as follows:

18 (1) The board may release on parole persons confined in any adult state penal or
19 correctional institution of Kentucky or sentenced felons or gross misdemeanants
20 incarcerated in county jails eligible for parole. All paroles shall issue upon order of
21 the board duly adopted. As soon as practicable after his or her admission to an adult
22 state penal or correctional institution or county jail if he or she is a sentenced felon,
23 and at such intervals thereafter as it may determine, the Department of Corrections
24 shall obtain all pertinent information regarding each prisoner, except those not
25 eligible for parole. The information shall include the results of his or her most
26 recent risk and needs assessment, his or her criminal record, his or her conduct,
27 employment, and the reports of physical and mental examinations that have been

1 made. The Department of Corrections shall furnish the circumstances of his or her
2 offense, the results of his or her most recent risk and needs assessment, and his or
3 her previous social history to the board. The Department of Corrections shall
4 prepare a report on any information it obtains. It shall be the duty of the Department
5 of Corrections to supplement this report with any material the board may request
6 and submit the report to the board.

7 (2) Before granting the parole of any prisoner, the board shall consider the pertinent
8 information regarding the prisoner, including the results of his or her most recent
9 risk and needs assessment, and shall have him or her appear before it for interview
10 and hearing. The board in its discretion may hold interviews and hearings for
11 prisoners convicted of Class C felonies not included within the definition of
12 "violent offender" in KRS 439.3401, ~~and~~ Class D felonies, and gross
13 misdemeanors. The board in its discretion may request the parole board of another
14 state confining prisoners pursuant to KRS 196.610 to interview eligible prisoners
15 and make a parole recommendation to the board. A parole shall be ordered only for
16 the best interest of society and not as an award of clemency, and it shall not be
17 considered a reduction of sentence or pardon. A prisoner shall be placed on parole
18 only when arrangements have been made for his or her proper employment or for
19 his or her maintenance and care, and when the board believes he or she is able and
20 willing to fulfill the obligations of a law abiding citizen. Notwithstanding any
21 statute to the contrary, including KRS 440.330, when a prisoner is otherwise
22 eligible for parole and the board has recommended parole for that prisoner for the
23 reasons set forth in this subsection, the board may grant parole to any prisoner
24 wanted as a fugitive by any other jurisdiction, and the prisoner shall be released to
25 the detainer from that jurisdiction. Such parole shall not constitute a relinquishment
26 of jurisdiction over the prisoner, and the board in all cases expressly reserves the
27 right to return the prisoner to confinement in a correctional institution of the

Commonwealth if the prisoner violates the terms of his or her parole.

- (3) (a) A nonviolent offender convicted of a gross misdemeanor with an aggregate sentence of not more than twenty-four (24) months, or of a Class D felony with an aggregate sentence of one (1) to five (5) years, who is confined to a state penal institution or county jail shall, ~~I have his or her case reviewed by the Parole Board~~ after serving fifteen percent (15%) or two (2) months of the original sentence, whichever is longer:

1. Be granted parole unless he or she:

a. Is a violent offender as defined in KRS 439.3401;

b. Is a sexual offender as defined in KRS 17.500; or

c. Has been found to have committed a disciplinary violation that involves violence; or

2. If he or she does not qualify under subparagraph 1. of this paragraph for mandatory parole, have his or her case reviewed by the Parole Board.

- (b) Except as provided in this section, the board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria and risk and needs assessment information; however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.

- (4) The board shall ensure~~insure~~ that all sentenced felons who have longer than ninety (90) days to serve in state penal institutions, halfway houses, and county jails

1 are considered for parole not less than sixty (60) days prior to their parole eligibility
2 date, and the Department of Corrections shall provide the necessary assistance and
3 information to the board in order for it to conduct timely parole reviews.

4 (5) In addition to or in conjunction with each hearing conducted under subsection (2) of
5 this section for any prisoner convicted of a Class A, B, or C felony and prior to the
6 granting of a parole to any such prisoner, the parole board shall conduct a hearing of
7 which the following persons shall receive not less than forty-five (45) nor more than
8 ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff
9 of every county and the chief of police of every city and county in which the
10 prisoner committed any Class A, B, or C felony for which he or she is imprisoned,
11 and all identified victims of the crimes or the next of kin of any victim who is
12 deceased. Notice to the Commonwealth's attorney shall be by mail, fax, or
13 electronic means at the discretion of the board, and shall be in a manner that ensures
14 receipt at the Commonwealth attorney's business office. Notices received by chiefs
15 of police and sheriffs shall be posted in a conspicuous location where police
16 employed by the department may see it. Notices shall be posted in a manner and at a
17 time that will allow officers to make comment thereon to the Parole Board. Notice
18 to victims or their next of kin shall be made, for prisoners incarcerated prior to July
19 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall
20 be in a manner that ensures receipt by the Commonwealth's attorney, who shall
21 forward the notice promptly to the victims or their next of kin at their last known
22 address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or
23 their next of kin shall be by mail from the Parole Board to their last known address
24 as provided by the Commonwealth's attorney to the Parole Board at the time of
25 incarceration of the prisoner. Notice to the victim or the next of kin of subsequent
26 considerations for parole after the initial consideration shall not be sent if the victim
27 or the next of kin gives notice to the board that he or she no longer wants to receive

- 1 such notices. The notice shall include the time, date, and place of the hearing
2 provided for in this subsection, and the name and address of a person to write if the
3 recipient of the notice desires to attend the hearing or to submit written comments.
- 4 (6) Persons receiving notice as provided for in subsection (5) of this section may
5 submit comments, in person or in writing, to the board upon all issues relating to the
6 parole of the prisoner. The board shall read and consider all comments prior to
7 making its parole decision, if they are received by the board not less than seven (7)
8 days before the date for the hearing. The board shall retain all comments in the
9 prisoner's permanent Parole Board file, and shall consider them in conjunction with
10 any subsequent parole decisions affecting the prisoner. In addition to officers listed
11 in subsection (5) of this section, the crime victims or the next of kin of any victim
12 who is deceased or who is disabled and cannot attend the hearing or the parent or
13 legal guardian of any victim who is a minor may attend the hearing provided for in
14 subsection (5) of this section and present oral and written comments upon all issues
15 relating to the parole of the prisoner, if they have advised the board, in writing
16 received by the board not less than seven (7) days prior to the date set for the
17 hearing, of their intention to attend the hearing. The board shall receive and
18 consider all comments, shall make a record of them which it shall retain in the
19 prisoner's permanent Parole Board file, and shall consider them in conjunction with
20 any subsequent parole decision affecting the prisoner. Persons appearing before the
21 Parole Board pursuant to this subsection may elect to make their presentations
22 outside of the presence of the prisoner.
- 23 (7) Victims of *gross misdemeanors and* Class D felonies may submit comments in
24 person or in writing to the board upon all issues relating to the parole of a prisoner.
- 25 (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be
26 open to the public unless the persons having a right to appear before the board as
27 specified in those subsections request closure of hearing for reasons of personal

1 safety, in which event the hearing shall be closed. The time, date, and location of
2 closed hearings shall not be disclosed to the public.

3 (9) Except as specifically set forth in this section, nothing in this section shall be
4 deemed to expand or abridge any existing rights of persons to contact and
5 communicate with the Parole Board or any of its members, agents, or employees.

6 (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its
7 members, agents, or employees or by a Commonwealth's attorney or any of his or
8 her agents or employees to comply with any of the provisions of subsections (5),
9 (6), and (8) of this section shall not affect the validity of any parole decision or give
10 rise to any right or cause of action by the crime victim, the prisoner, or any other
11 person.

12 (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be
13 granted parole unless he or she has successfully completed the Sexual Offender
14 Treatment Program.

15 (12) Any prisoner who is granted parole after completion of the Sexual Offender
16 Treatment Program shall be required, as a condition of his or her parole, to
17 participate in regular treatment in a mental health program approved or operated by
18 the Department of Corrections.

19 (13) When the board grants parole contingent upon completion of a program, the
20 commissioner, or his or her designee, shall determine the most appropriate
21 placement in a program operated by the department or a residential or nonresidential
22 program within the community approved by the department. If the department
23 releases a parolee to a nonresidential program, the department shall release the
24 parolee only if he or she will have appropriate community housing pursuant to KRS
25 439.3408.

26 (14) If the parole board does not grant parole to a prisoner, the maximum deferment for a
27 prisoner convicted of a non-violent, non-sexual Class C or Class D felony shall be

1 twenty-four (24) months. *For a prisoner convicted of a gross misdemeanor, the*
2 *maximum deferment shall be six (6) months.* For all other prisoners who are
3 eligible for parole:

4 (a) No parole deferment greater than five (5) years shall be ordered unless
5 approved by a majority vote of the full board; and

6 (b) No deferment shall exceed ten (10) years, except for life sentences.

7 (15) When an order for parole is issued, it shall recite the conditions thereof.

8 ➔Section 15. KRS 218A.135 is amended to read as follows:

9 (1) Any statute to the contrary notwithstanding, a defendant charged with an offense
10 under this chapter for which a conviction may result in presumptive probation shall
11 be placed on pretrial release on his or her own recognizance or on unsecured bond
12 by the court subject to any conditions, other than bail, specified in KRS 431.515 to
13 431.550.

14 (2) The provisions of this section shall not apply to a defendant who is found by the
15 court to present a flight risk or to be a danger to others.

16 (3) If a court determines that a defendant shall not be released pursuant to subsection
17 (2) of this section, the court shall document the reasons, *specific to the defendant,*
18 for denying the release in a written order.

19 ➔Section 16. KRS 516.030 is amended to read as follows:

20 (1) A person is guilty of forgery in the second degree when, with intent to defraud,
21 deceive or injure another, he falsely makes, completes or alters a written instrument,
22 or in the commission of a human trafficking offense as described in KRS 529.100
23 or 529.110, coerces another person to falsely make, complete, or alter a written
24 instrument, which is or purports to be or which is calculated to become or to
25 represent when completed:

26 (a) A deed, will, codicil, contract, assignment, commercial instrument, credit card
27 or other instrument which does or may evidence, create, transfer, terminate or

1 otherwise affect a legal right, interest, obligation or status; or

2 (b) A public record or an instrument filed or required or authorized by law to be
3 filed in or with a public office or public employee; or

4 (c) A written instrument officially issued or created by a public office, public
5 employee or governmental agency.

6 (2) Forgery in the second degree is a **gross misdemeanor unless the value sought to be**
7 **gained through the forgery is five hundred dollars (\$500) or more, in which case**
8 **it is a** Class D felony.

9 ➔Section 17. KRS 516.060 is amended to read as follows:

10 (1) A person is guilty of criminal possession of a forged instrument in the second
11 degree when, with knowledge that it is forged and with intent to defraud, deceive or
12 injure another, he utters or possesses any forged instrument of a kind specified in
13 KRS 516.030.

14 (2) Criminal possession of a forged instrument in the second degree is a **gross**
15 **misdemeanor unless the value sought to be gained through the forgery is five**
16 **hundred dollars (\$500) or more, in which case it is a** Class D felony.

17 ➔Section 18. KRS 534.070 is amended to read as follows:

18 (1) A defendant who has been sentenced to jail for failure to pay a fine or court costs or
19 for failure to appear in court on a date set for the sole purpose of addressing
20 nonpayment of a fine or court costs shall receive credit against the fine and costs
21 owed for each day the defendant spends in jail at the following rates:

22 (a) **One hundred dollars (\$100)**~~Fifty dollars (\$50)~~ per day if the defendant does
23 not work at a community service or community labor program; or

24 (b) **One hundred fifty dollars (\$150)**~~One hundred dollars (\$100)~~ per day if the
25 defendant works eight (8) hours per day at a community service or community
26 labor program. If the defendant works less than eight (8) hours in a
27 community service or community labor program, the defendant shall be

1 allowed an amount of one-eighth (1/8) of the one hundred fifty dollars
2 (\$150)~~one hundred dollars (\$100)~~ for each hour worked in a community
3 service or community labor program.

4 (2) Credit against a fine or court costs earned by a defendant pursuant to this section
5 shall prohibit the collection of any part of a fine or costs which has been credited
6 pursuant to this section, and that portion of the fine or costs shall be considered
7 paid.

8 (3) The jailer shall be responsible for monitoring a defendant's community service and
9 tracking the number of days to be served to pay any outstanding fine or court costs.

10 (4) If a partial payment is made by the defendant or on behalf of a defendant, that
11 payment shall be applied first to court costs, then to fees, and then to fines pursuant
12 to KRS 23A.205 or 24A.175 prior to the application of any credit earned pursuant
13 to this section. Credit earned pursuant to this section shall not be applied to
14 restitution.

15 ➔Section 19. KRS 431.066 is amended to read as follows:

16 (1) For purposes of this section, "verified and eligible defendant" means a defendant
17 who pretrial services is able to interview and assess, and whose identity pretrial
18 services is able to confirm through investigation.

19 (2) When a court considers pretrial release and bail for an arrested defendant, the court
20 shall consider whether the defendant constitutes a flight risk, is unlikely to appear
21 for trial, or is likely to be a danger to the public if released. In making this
22 determination, the court shall consider the pretrial risk assessment for a verified and
23 eligible defendant along with the factors set forth in KRS 431.525.

24 (3) If a verified and eligible defendant poses low risk of flight, is likely to appear for
25 trial, and is not likely to be a danger to others, the court shall order the defendant
26 released on unsecured bond or on the defendant's own recognizance subject to such
27 other conditions as the court may order.

- 1 (4) If a verified and eligible defendant poses a moderate risk of flight, has a moderate
2 risk of not appearing for trial, or poses a moderate risk of danger to others, the court
3 shall release the defendant under the same conditions as in subsection (3) of this
4 section but shall consider ordering the defendant to participate in global positioning
5 system monitoring, controlled substance testing, increased supervision, or such
6 other conditions as the court may order.
- 7 (5) (a) Except as provided in paragraph (b) of this subsection, regardless of the
8 amount of the bail set, the court shall permit the defendant a credit of one
9 hundred dollars (\$100) per day as a payment toward the amount of the bail set
10 for each day or portion of a day that the defendant remains in jail prior to trial.
11 Upon the service of sufficient days in jail to have sufficient credit to satisfy
12 the bail, the defendant shall be released from jail on the conditions specified
13 in this section or in this chapter.
- 14 (b) The provisions of paragraph (a) of this subsection shall not apply to:
- 15 1. Any person convicted of, pleading guilty to, or entering an Alford plea
16 to a felony offense under KRS Chapter 510, KRS 529.100 involving
17 commercial sexual activity, KRS 530.020, 530.064(1)(a), 531.310, or
18 531.320, or who is a violent offender as defined in KRS 439.3401; or
- 19 2. A defendant who is found by the court to present a substantial risk of
20 fleeing the jurisdiction and failing to return for future court
21 appearances or a substantial risk of danger to the physical safety
22 of ~~flight risk or to be a danger to~~ others.
- 23 (c) For purposes of this subsection, "a day or portion of a day" means any time
24 spent in a detention facility following booking.
- 25 (d) A defendant shall not earn credit pursuant to paragraph (a) of this subsection
26 while also earning credit pursuant to KRS 534.070.
- 27 (6) If a court determines that a defendant shall not be released pursuant to subsection

1 (5) of this section, the court shall document the reasons for denying the release in a
2 written order.

3 (7) The jailer shall be responsible for tracking the credit earned by a defendant pursuant
4 to subsection (5) of this section.

5 ➔Section 20. KRS 532.080 is amended to read as follows:

6 (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the
7 sentence of imprisonment assessed under KRS 532.060 for the crime of which such
8 person presently stands convicted, ~~may~~shall fix a sentence of imprisonment as
9 authorized by subsection (5) or (6) of this section. When a defendant is charged
10 with being a persistent felony offender, the determination of whether or not he or
11 she is such an offender and the punishment to be imposed ~~pursuant to subsection~~
12 ~~(5) or (6) of this section~~ shall be determined in a separate proceeding from that
13 proceeding which resulted in his last conviction. Such proceeding shall be
14 conducted before the court sitting with the jury that found the defendant guilty of
15 his most recent offense unless the court for good cause discharges that jury and
16 impanels a new jury for that purpose.

17 (2) A persistent felony offender in the second degree is a person who is more than
18 twenty-one (21) years of age and who stands convicted of a felony after having been
19 convicted of one (1) previous felony. As used in this provision, a previous felony
20 conviction is a conviction of a felony in this state or conviction of a crime in any
21 other jurisdiction provided:

22 (a) That a sentence to a term of imprisonment of one (1) year or more or a
23 sentence to death was imposed therefor; and

24 (b) That the offender was over the age of eighteen (18) years at the time the
25 offense was committed; and

26 (c) That the offender:

27 1. Completed service of the sentence imposed on the previous felony

- 1 conviction within five (5) years prior to the date of commission of the
2 felony for which he now stands convicted; or
- 3 2. Was on probation, parole, postincarceration supervision, conditional
4 discharge, conditional release, furlough, appeal bond, or any other form
5 of legal release from any of the previous felony convictions at the time
6 of commission of the felony for which he now stands convicted; or
- 7 3. Was discharged from probation, parole, postincarceration supervision,
8 conditional discharge, conditional release, or any other form of legal
9 release on any of the previous felony convictions within five (5) years
10 prior to the date of commission of the felony for which he now stands
11 convicted; or
- 12 4. Was in custody from the previous felony conviction at the time of
13 commission of the felony for which he now stands convicted; or
- 14 5. Had escaped from custody while serving any of the previous felony
15 convictions at the time of commission of the felony for which he now
16 stands convicted.
- 17 (3) A persistent felony offender in the first degree is a person who is more than twenty-
18 one (21) years of age and who stands convicted of a felony after having been
19 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against
20 a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more
21 felonies. As used in this provision, a previous felony conviction is a conviction of a
22 felony in this state or conviction of a crime in any other jurisdiction provided:
- 23 (a) That a sentence to a term of imprisonment of one (1) year or more or a
24 sentence to death was imposed therefor; and
- 25 (b) That the offender was over the age of eighteen (18) years at the time the
26 offense was committed; and
- 27 (c) That the offender:

- 1 1. Completed service of the sentence imposed on any of the previous
- 2 felony convictions within five (5) years prior to the date of the
- 3 commission of the felony for which he now stands convicted; or
- 4 2. Was on probation, parole, postincarceration supervision, conditional
- 5 discharge, conditional release, furlough, appeal bond, or any other form
- 6 of legal release from any of the previous felony convictions at the time
- 7 of commission of the felony for which he now stands convicted; or
- 8 3. Was discharged from probation, parole, postincarceration supervision,
- 9 conditional discharge, conditional release, or any other form of legal
- 10 release on any of the previous felony convictions within five (5) years
- 11 prior to the date of commission of the felony for which he now stands
- 12 convicted; or
- 13 4. Was in custody from the previous felony conviction at the time of
- 14 commission of the felony for which he now stands convicted; or
- 15 5. Had escaped from custody while serving any of the previous felony
- 16 convictions at the time of commission of the felony for which he now
- 17 stands convicted.
- 18 (4) For the purpose of determining whether a person has two (2) or more previous
- 19 felony convictions, two (2) or more convictions of crime for which that person
- 20 served concurrent or uninterrupted consecutive terms of imprisonment shall be
- 21 deemed to be only one (1) conviction, unless one (1) of the convictions was for an
- 22 offense committed while that person was imprisoned.
- 23 (5) A person who is found to be a persistent felony offender in the second degree
- 24 ~~may~~shall be sentenced as follows:
- 25 (a) A person sentenced as a persistent felony offender in the second degree
- 26 shall be sentenced to an indeterminate term of imprisonment pursuant to the
- 27 sentencing provisions of KRS 532.060(2) for the next highest degree than the

offense for which convicted; or

(b) If the jury declines to sentence the defendant as a persistent felony offender

in the second degree, it shall sentence the defendant in accordance with

KRS 532.060. ~~[A person who is found to be a persistent felony offender in the~~

~~second degree shall not be eligible for probation, shock probation, or~~

~~conditional discharge, unless all offenses for which the person stands~~

~~convicted are Class D felony offenses which do not involve a violent act~~

~~against a person, in which case probation, shock probation, or conditional~~

~~discharge may be granted. A violent offender who is found to be a persistent~~

~~felony offender in the second degree shall not be eligible for parole except as~~

~~provided in KRS 439.3401.]~~

(6) A person who is found to be a persistent felony offender in the first degree

may~~[shall]~~ be sentenced~~[to imprisonment]~~ as follows:

(a) 1. If the offense for which he or she presently stands convicted is a Class A

or Class B felony, or if the person was previously convicted of one (1) or

more sex crimes committed against a minor as defined in KRS 17.500

and presently stands convicted of a subsequent sex crime, a person

sentenced as a persistent felony offender in the first degree shall be

sentenced to an indeterminate term of imprisonment, the maximum of

which shall not be less than twenty (20) years nor more than fifty (50)

years, or life imprisonment, or life imprisonment without parole for

twenty-five (25) years for a sex crime committed against a minor; or

2.~~[(b)]~~ If the offense for which he or she presently stands convicted is a

Class C or Class D felony, a person sentenced as a persistent felony

offender in the first degree shall be sentenced to an indeterminate term

of imprisonment, the maximum of which shall not be less than ten (10)

years nor more than twenty (20) years; or

1 **(b) If the jury declines to sentence the defendant as a persistent felony offender**
 2 **in the first degree, it may sentence the defendant as a persistent felony**
 3 **offender in the second degree in accordance with subsection (5) of this**
 4 **section. If the jury declines to sentence the defendant as a persistent felony**
 5 **offender in the second degree, it shall sentence the defendant in accordance**
 6 **with KRS 532.060.**

7 (7) **(a)** A person who is **sentenced as**~~[found to be]~~ a persistent felony offender~~[in the~~
 8 ~~first degree]~~ shall not be eligible for probation, shock probation, or conditional
 9 discharge, unless all offenses for which the person stands convicted are Class
 10 D felony offenses which do not involve a violent act against a person or a sex
 11 crime as that term is defined in KRS 17.500, in which case, probation, shock
 12 probation, or conditional discharge may be granted.

13 **(b)** If the offense the person presently stands convicted of is a Class A ~~or~~~~[,]~~ B~~, or~~
 14 C~~] felony, a~~~~[the]~~ person **who is sentenced as a persistent felony offender in**
 15 **the first degree** shall not be eligible for parole until the person has served a
 16 minimum term of incarceration of not less than ten (10) years, unless another
 17 sentencing scheme applies.

18 **(c)** A violent offender who is found to be a persistent felony offender ~~[in the first~~
 19 ~~degree]~~ shall not be eligible for parole except as provided in KRS 439.3401.

20 (8) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger
 21 the application of this section, regardless of the number or type of prior felony
 22 convictions that may have been entered against the defendant. A conviction, plea of
 23 guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense
 24 allowing this section to be applied if he or she is subsequently convicted of a
 25 different felony offense.

26 (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be
 27 retroactive.

(10) (a) Except as provided in paragraph (b) of this subsection, this section shall not apply to a person convicted of a criminal offense if the penalty for that offense was increased from a misdemeanor to a felony, or from a lower felony classification to a higher felony classification, because the conviction constituted a second or subsequent violation of that offense.

(b) This subsection shall not prohibit the application of this section to a person convicted of:

1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140, 508.032, 508.140, or 510.015; or
2. Any other felony offense if the penalty was not enhanced to a higher level because the Commonwealth elected to prosecute the person as a first-time violator of that offense.

➔Section 21. KRS 439.3106 is amended to read as follows:

(1) Supervised individuals *who fail to comply with the conditions of supervision* shall be subject to:

~~(a)(1)~~ Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community. *If supervision is being revoked, the court or the board shall make specific findings of fact and conclusions of law, stating that the requirements of this subsection have been met by clear and convincing evidence;* or

~~(b)(2)~~ Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

(2) *If the case is brought before it, a court or the board shall consider the system of*

1 graduated sanctions authorized by KRS 439.3107 to assess the appropriate
2 sanctions.

3 ➔Section 22. KRS 197.045 is amended to read as follows:

4 (1) Any person convicted and sentenced to a state penal institution, or sentenced on a
5 felony or gross misdemeanor and incarcerated in a county jail:

6 (a) Shall receive a credit on his or her sentence for:

- 7 1. Prior confinement as specified in KRS 532.120;
- 8 2. Successfully receiving a general equivalency diploma or a high school
9 diploma, a two (2) or four (4) year college degree, a two (2) year or four
10 (4) year degree in applied sciences, a completed technical education
11 program, or an online or correspondence education program, each as
12 provided and defined by the department, or a civics education program
13 that requires passing a final exam, in the amount of ninety (90) days per
14 diploma, degree, or technical education program completed; and
- 15 3. Successfully completing a drug treatment program or other evidence-
16 based program approved by the department, in the amount of not more
17 than ninety (90) days for each program completed; and

18 (b) May receive a credit on his or her sentence for:

- 19 1. Good behavior in an amount not exceeding ten (10) days for each month
20 served, to be determined by the department from the conduct of the
21 prisoner;
- 22 2. Performing exceptionally meritorious service or performing duties of
23 outstanding importance in connection with institutional operations and
24 programs, awarded at the discretion of the commissioner in an amount
25 not to exceed seven (7) days per month; and
- 26 3. Acts of exceptional service during times of emergency, awarded at the
27 discretion of the commissioner in an amount not to exceed seven (7)

1 days per month.

2 (2) Except for a sentencing credit awarded for prior confinement, the department may
3 forfeit any sentencing credit awarded under subsection (1) of this section previously
4 earned by the prisoner or deny the prisoner the right to earn future sentencing credit
5 in any amount if during the term of imprisonment, a prisoner commits any offense
6 or violates the rules of the institution.

7 (3) When two (2) or more consecutive sentences are to be served, the several sentences
8 shall be merged and served in the aggregate for the purposes of the sentencing credit
9 computation or in computing dates of expiration of sentence.

10 (4) Until successful completion of the sex offender treatment program, an eligible
11 sexual offender may earn sentencing credit. However, the sentencing credit shall not
12 be credited to the eligible sexual offender's sentence. Upon the successful
13 completion of the sex offender treatment program, as determined by the program
14 director, the offender shall be eligible for all sentencing credit earned but not
15 otherwise forfeited under administrative regulations promulgated by the Department
16 of Corrections. After successful completion of the sex offender treatment program,
17 an eligible sexual offender may continue to earn sentencing credit in the manner
18 provided by administrative regulations promulgated by the Department of
19 Corrections. Any eligible sexual offender, as defined in KRS 197.410, who has not
20 successfully completed the sex offender treatment program as determined by the
21 program director shall not be entitled to the benefit of any credit on his or her
22 sentence. A sexual offender who does not complete the sex offender treatment
23 program for any reason shall serve his or her entire sentence without benefit of
24 sentencing credit, parole, or other form of early release. The provisions of this
25 section shall not apply to any sexual offender convicted before July 15, 1998, or to
26 any sexual offender with an intellectual disability.

27 (5) (a) The Department of Corrections shall, by administrative regulation, specify the

1 length of forfeiture of sentencing credit and the ability to earn sentencing
2 credit in the future for those inmates who have civil actions dismissed because
3 the court found the action to be malicious, harassing, or factually frivolous.

4 (b) Penalties set by administrative regulation pursuant to this subsection shall be
5 as uniform as practicable throughout all institutions operated by, under
6 contract to, or under the control of the department and shall specify a specific
7 number of days or months of sentencing credit forfeited as well as any
8 prohibition imposed on the future earning of sentencing credit.

9 (6) The provisions in subsection (1)(a)2. of this section shall apply retroactively to July
10 15, 2011.

11 ➔Section 23. KRS 24A.110 is amended to read as follows:

12 (1) The District Court shall have exclusive jurisdiction to make final disposition of all
13 criminal matters, including violations of county, urban-county, or city ordinances or
14 codes, except:

15 (a) Offenses denominated by statute as gross misdemeanors, felonies, or capital
16 offenses; and

17 (b) Offenses punishable by death or imprisonment in the penitentiary.

18 (2) The District Court has exclusive jurisdiction to make a final disposition of any
19 charge or a public offense denominated as a misdemeanor or violation, except
20 where the charge is joined with an indictment for a felony, and all violations of
21 county, urban-county, or city ordinances and, prior to trial, to commit the defendant
22 to jail or hold him to bail or other form of pretrial release.

23 (3) The District Court has, concurrent with Circuit Court, jurisdiction to examine any
24 charge of a public offense denominated as a gross misdemeanor, felony, or capital
25 offense or which may be punished by death or imprisonment in the penitentiary and
26 to commit the defendant to jail or hold him to bail or other form of pretrial release.

27 (4) The District Court may, upon motion and for good cause shown, reduce a charge of

1 a felony to a misdemeanor in accordance with the Rules of Criminal Procedure.

2 ➔Section 24. KRS 431.005 is amended to read as follows:

3 (1) A peace officer may make an arrest:

4 (a) In obedience to a warrant; or

5 (b) Without a warrant when a felony is committed in his or her presence; or

6 (c) Without a warrant when he or she has probable cause to believe that the
7 person being arrested has committed a felony; or

8 (d) Without a warrant when a misdemeanor, as defined in Section 1 of this
9 Act~~[KRS 431.060]~~, has been committed in his or her presence; or

10 (e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520,
11 189.580, 511.080, or 525.070 has been committed in his or her presence,
12 except that a violation of KRS 189A.010 or KRS 281A.210 need not be
13 committed in his or her presence in order to make an arrest without a warrant
14 if the officer has probable cause to believe that the person being arrested has
15 violated KRS 189A.010 or KRS 281A.210; or

16 (f) Without a warrant when a violation of KRS 508.030 has occurred in the
17 emergency room of a hospital without the officer's presence if the officer has
18 probable cause to believe that the person being arrested has violated KRS
19 508.030. For the purposes of this paragraph, "emergency room" means that
20 portion of a licensed hospital which has the primary purpose of providing
21 emergency medical care, twenty-four (24) hours per day, seven (7) days per
22 week, and three hundred sixty-five (365) days per year.

23 (2) (a) Any peace officer may arrest a person without warrant when the peace officer
24 has probable cause to believe that the person has intentionally or wantonly
25 caused physical injury to a family member, member of an unmarried couple,
26 or another person with whom the person was or is in a dating relationship.

27 (b) As used in this subsection, "dating relationship," "family member," and

1 "member of an unmarried couple" have the same meanings as defined in KRS
2 403.720 and 456.010.

3 (c) For the purpose of this subsection, the term "member of an unmarried couple"
4 has the same meaning as set out in KRS 403.720.

5 (3) A peace officer may arrest a person without a warrant when the peace officer has
6 probable cause to believe that the person is a sexual offender who has failed to
7 comply with the Kentucky Sex Offender Registry requirements based upon
8 information received from the Law Information Network of Kentucky.

9 (4) For purposes of subsections (2) and (3) of this section, a "peace officer" is an officer
10 certified pursuant to KRS 15.380.

11 (5) If a law enforcement officer has probable cause to believe that a person has violated
12 a condition of release imposed in accordance with KRS 431.064 and verifies that
13 the alleged violator has notice of the conditions, the officer shall, without a warrant,
14 arrest the alleged violator whether the violation was committed in or outside the
15 presence of the officer.

16 (6) A private person may make an arrest when a felony has been committed in fact and
17 he or she has probable cause to believe that the person being arrested has committed
18 it.

19 (7) If a law enforcement officer has probable cause to believe that a person has violated
20 a restraining order issued under KRS 508.155, then the officer shall, without a
21 warrant, arrest the alleged violator whether the violation was committed in or
22 outside the presence of the officer.

23 ➔Section 25. KRS 431.062 is amended to read as follows:

24 (1) No person shall be detained in jail prior to trial for any offense defined in KRS
25 ~~{431.060, 500.080,}~~ or 532.020 as a violation unless:

26 (a) He has previously failed to make a court appearance required in connection
27 therewith; or

- 1 (b) Is a fugitive from justice.
- 2 (2) This section shall not apply to the offenses listed in KRS 431.015 or 222.202.
- 3 ➔Section 26. The following KRS section is repealed:
- 4 431.060 Felonies, misdemeanors and violations defined.